DOCUMENT RESUME

ED 141 458 UD 017 073

AUTHOR	McKay, Robert B.
TITLE	Nine for Equality Under Law: Civil Rights Litigation. A Report to the Ford Foundation
SPONS AGENCY	Ford Foundation, New York, N.Y.
PUB DATE	Apr 77
NOTE	35p.; Best copy available; Photographs may reproduce poorly
AVAILABLE FROM	Ford Foundation, Office of Reports, 320 East 43 Street, New York, N.Y.
EDRS PRICE	MF-$0.83 HC-$2.06 Plus Postage.
DESCRIPTORS	*Civil Rights Legislation; *Court Litigation; *Educational Programs; Evaluation; Financial Support; *Foundation Programs; Laws; Lawyers; Legal Aid Projects; Legal Costs; *Minority Groups; *Organizational Effectiveness
IDENTIFIERS	Center for National Policy Review; Lawyers Committee for Civil Rights Under Law; Legal Action Center of the City of New York; Mexican American Legal Defense Educational Fund; NAACP Legal Defense and Educational Fund; National Committee Against Discrimination Housing; Native American Rights Fund; Puerto Rican Legal Defense and Education Fund; Womens Law Fund

ABSTRACT

This report reviews the litigation activities of the nine organizations which received financial assistance from the Ford Foundation to assess the usefulness of litigation as a means of advancing Constitutional civil rights. The litigation activities of the NAACP Legal Defense and Educational Fund, and the Lawyers' Committee for Civil Rights Under Law are described. The Ford Foundation also helped establish the Native American Rights Fund, the Mexican Education Fund, and the Women's Law Fund. The activities of these four organizations are described as are the activities on behalf of former addicts and ex-offenders by the National Committee Against Discrimination in Housing and the Legal Action Center. Finally, the Center for National Policy Review, which monitors civil rights and equal opportunity legislation and policy by federal government agencies is described. An appendix lists the recipients of Ford Foundation funds for civil rights litigation programs along with the amount of each grant and the address, director and age of each recipient organization. Photographs of people and activities are included. (Author/JP)

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Nine for Equality Under Law: Civil Rights Litigation

A REPORT TO THE FORD FOUNDATION

by

Robert B. McKay

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One of a series of reports on activities supported by the Ford Foundation. A complete list of publications may be obtained from the Foundation's Office of Reports, 320 East 43 Street, New York, N. Y. 10017.

Cases by Nancy Boggs and Lois Muss

Library of Congress Catalog Card Number 77-70314 April 1977

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Foreword

This report was prepared by Robert B. McKay, former Dean of New York University Law School and now Director, Program on Justice, Society and the Individual, Aspen Institute for Humanistic Studies. We commissioned the document to get an outsider's view of the litigation program the Foundation has supported in the civil rights field, and some sense of its effectiveness and responsiveness to the needs of the community the program serves.

As the report notes, the Foundation has made grants for civil rights litigation since 1967, although most of the activity began in 1969. Approximately $18 million has so far been expended by the Foundation in this field. An appendix lists the recipients.

Foundation efforts on behalf of equality of opportunity, especially for the disadvantaged and minorities, is not limited to legal action to ensure civil rights. Support has also gone to civil rights monitoring and advocacy organizations that seek to promote equal opportunity in housing, education, health, and jobs, and to remove barriers to minority electoral participation. Such groups include the National Association for the Advancement of Colored People, the Southern Regional Council, the National Council of La Raza, and the Voter Education Project. Combating discrimination and lack of equity in education has also had a high priority. For example, since 1972 about 75 per cent of the Foundation's support for higher education has been allocated to increasing the number of blacks, Puerto Ricans, Mexican Americans, and American Indians in American colleges and universities, both as students and teachers. Other efforts focusing on minorities include broadening artistic opportunities, especially for professional artistic training.

The Foundation is committed to the field of civil rights litigation at least through fiscal 1979. Although the amount budgeted goes down each year, we have attempted to limit the decreases as much as possible. We are convinced that Foundation support is currently important to the survival of these organizations, and that without them little effective work would be done in the field of civil rights litigation.

McGeorge Bundy

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Discrimination and Equality

Discrimination has been a constant in United States history. It has affected and hurt many minority groups. Sometimes it has been unthinking, almost casual. Today, even in an age of sharply increased awareness, it persists with particularly harmful effects—against blacks, who were largely invisible during long periods of American history; against American Indians in continuance of of a dark chapter in that history; against Mexican Americans, who were suspect because they (or their forebears) were "foreigners"; against Puerto Ricans, who spoke a language and followed traditions alien to the mainland; against women, who were respected as conservators of hearth and home but not accorded equality elsewhere; against others whose only offense was age or poverty, and against ex-addicts and ex-offenders as if to ensure recidivism.

Other groups that have suffered the lash of prejudice and exclusion over the course of American history are Catholics, Jews, and certain Protestant immigrant groups. They have sometimes been excluded from equal access to education, employment, and positions of political and social influence. But the weight of that discrimination, based mainly on religion, has been lightened a good deal as these groups have succeeded in making their way up the ladder of economic and social mobility in American society. The problem is more complicated for people of a different color, or when it comes to discrimination on the basis of sex or cultural differences.

On the other side of the ledger of American history, there is a deep commitment to equality. It appeared originally in the literature and declarations leading to the war for independence and, at the insistence of the victorious citizens, in the Bill of Rights. The emphasis was on freedom as the guarantee of individual rights, and as an atmosphere in which everyone had an opportunity to find his place in society.

The Civil War Amendments to the Constitution—the Thirteenth, Fourteenth, and Fifteenth—broadened the national commitment to equality. Those amendments became the basis of decisions that provided increased opportunity for the exercise of individual rights in political, as well as economic and social terms. But in the last quarter of the nineteenth century the promise of equal opportunity faded into rationalizations of "separate but equal," and often worse, without even a pretense of equality. From that time until the second half of the twentieth century there was little progress toward the realization of the ideals and opportunities expressed in the Bill of Rights and subsequent amendments. The legacy of discrimination and disregard for equal rights made it difficult, if not impossible, for those who continued to be the victims of prejudice to rise above their dismal economic and social plight on the basis of individual merit. As Judge Leon Higginbotham has observed:

> One of the tragedies of today's racial polarization is that blacks, who have been the major victims of historic racial deprivations, are now in some strange way being held accountable for those very conditions which they did not create, which they did not want, but were forced to take.[1]

Mexican Americans, Puerto Ricans, and Native Americans, with problems more recently exposed to public view, have often shared a similar outcast status. But it is the blacks, having felt the sting of oppression most massively, who have led the fight to give substance and reality to the principle of equality. Their long and continuing struggle was and still is required because the right to equal treatment is not self-enforcing. The vindication of the principle involves a complex legal, legislative, and administrative process:

1. The Supreme Court of the United States must interpret the constitutional text, through decision in specific cases, to assure that the words are clearly understood. In the case of the equal protection of the laws clause, as applied to blacks, that full assurance did not emerge until 1954, with the decision in *Brown* v. *Board of Education*.

2. Since the Supreme Court often speaks negatively—it says "thou shalt not," as it were—the majesty of the constitutional imperatives requires translation into the affirmative specifics of legislation by Congress and state legislatures.

3. Even when the courts have spoken definitively, and the legislatures have followed the command, there remains the need for public acceptance. Here, the importance of leadership by the executive branch of government, and especially by the President, is crucial. Equally important is the support provided by local leaders; again, success or

failure depends largely on community acceptance. The law plays an important but limited educational role.

4. No matter what the leadership provided by the Supreme Court, by Congress, the President, and by local leaders, problems are bound to arise in the translation of principles into patterns of everyday living. Economic or social conflicts of interest, often exacerbated by deeply held prejudice, tend to slow or halt the process, necessitating yet another round to reassert the principle in the courts and in the legislatures.

Examples come readily to mind. The promise of equality in the Fourteenth Amendment was a long time in being fulfilled. Only in the voting rights cases was the language of the Fourteenth Amendment used to guarantee an element of equal rights.[2] But these legal victories were late in coming and sporadic at best until Congress acted, haltingly in 1957 and 1960, and more effectively with the Voting Rights Act of 1965, and its renewal in 1975.[3] Not until 1954 was there a significant Supreme Court affirmation of the anti-discrimination aspect of the equal protection clause of the Fourteenth Amendment. The ruling in that case, *Brown* v. *Board of Education*, was eloquent and straightforward:

> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.[4]

Before long it was demonstrated once more that even the clearest constitutional mandate is not self-enforcing against determined resistance. Every step along the way, from the express ruling through various steps of legislative and administrative action, can and often does serve as a basis for challenge by opponents. If the guard is let down, the constitutional principle is again at risk. To protect against this hazard requires commitment, competent personnel, and considerable financial resources.

Until at least the mid-1960s the NAACP Legal Defense and Educational Fund stood almost alone in this effort.[5] Although the Legal Defense Fund, as it is popularly known, had as its principal mission the protection of blacks against all forms of racial discrimination, it recognized that success in this work might well be jeopardized if it were not accompanied by efforts to secure protection for other groups against whom discrimination was being practiced on grounds of race, religion, ethnic background, or sex. The equal protection clause, in its proscription of acts of bias against individuals, is all-embracing. Accordingly, the Legal Defense Fund has all along been a champion of all who suffer from discrimination.

In the late 1960s the Ford Foundation recognized the heavy obligation that the Legal Defense Fund had until then assumed largely by itself. Relief from what might otherwise become an intolerable burden could be provided in two ways:

—direct financial aid to provide the necessary resources for litigation of high quality,

—establishment of other organizations to assume primary responsibility for litigation on behalf of different constituencies (e.g., women, Mexican Americans, Native Americans, Puerto Ricans), or to specialize in litigating cases in specific areas (e.g., housing, narcotics addiction, prisoners' rights), or to exercise oversight of the implementation of legislation and policy in the civil rights field.

With some planning and much improvisation the Foundation moved in both directions. It made grants totaling approximately $18 million during the seven-year span of 1967-1975. The purpose of this report is to examine the manner in which this major commitment has been carried out and to describe what has been accomplished.

Background and Objectives

The civil rights movement has long received support from varied private sources, including foundations, corporations, and individuals. But litigation work has received a relatively small share of that total, with the bulk of support going to the more traditional areas of research, scholarship grants, and the strengthening of institutions weakened by discrimination. The reluctance for many years of philanthropic institutions to make major allocations to litigation as a means to promote progress in civil rights may have its roots in a traditional view of the judicial function, which holds that where an injustice exists that is within the power of the courts

to correct, litigants will come forward to set in motion the necessary machinery to right the wrong. Yet in reality, wrongs are not self-righting, even when courts are at hand to take the necessary corrective steps, needing only the trigger of litigation. The natural plaintiffs often are reluctant to initiate action, and more often lack the resources to commission the studies, conduct the investigations, and engage the legal talent essential to an effective challenge.

Furthermore, many people, including elements of the organized bar, have long felt that to provide financial assistance for the conduct of litigation, regardless of the merits of the case, might be an inappropriate intrusion into the judicial process. In fact, litigation was necessary to establish the very proposition that group advocacy of individual rights is permissible.* But even when court decisions had established the appropriateness of civil rights litigation, there was no large outpouring of philanthropic support. Perhaps the commitment to other kinds of civil rights efforts was too solid to permit easy diversion of the effort in new directions; perhaps there remained a lingering mistrust of judicial intervention into individual cases as a means of achieving broad reform and fear of controversial consequences. Whatever the reasons, litigation as an instrument of civil rights reform has not attracted financial support in anything like the amounts that have gone to other civil rights activities.

The Foundation made its major commitment to civil rights and disadvantaged minorities in 1967. Parity for minorities and efforts to find new approaches to the often related problems of urban areas became the main goals of the newly created National Affairs Division. The change in Foundation priorities was reflected in a rapid increase in grant funds related to minority rights: from only 2.5 per cent in 1960 to 38.5 per cent in 1968, and 40 per cent in 1970.

But only a part of this money was for litigation. Ranked in the order of dollar support originally allocated to the minorities and the poor, the Foundation listed four areas for action:

1. Community development, particularly in inner-city ghettos.*

2. Civil rights advocacy, such as the activities of the Urban League and the NAACP (as a separate entity, distinct from the NAACP Legal Defense Fund).

3. Civil rights litigation.

4. Public interest law.**

This allocation of resources by the Foundation was also affected by the decisions and actions of other institutions. Community development, the Foundation's first priority, was supported substantially by other private and public sources. Civil rights groups also received considerable assistance from private groups and individuals, but no public money. Not so with civil rights litigation, however. (Public interest law was a new field when the Foundation entered it in 1970 and it has only gradually built up some diversity of assistance.)

Foundation grants for civil rights litigation, totaling some $16 million, reflect the following objectives: to help remove barriers to equality caused by discrimination on the basis of race, ethnic background, or sex; to help provide equal access for minorities and the poor to housing, education, jobs, and other avenues to opportunity, and to help insure fair treatment by government.

The growing importance attached to litigation is indicated by the fact that, when a reduction in Foundation giving was announced in 1975, the level of support for civil rights litigation remained essentially constant.

The Foundation's first grants in the field, in 1967, were to the NAACP Legal Defense and Educational Fund, which had a solid reputation for competence, and to the Lawyers' Committee for Civil Rights Under Law, which grew out of a 1963 White House meeting between President Kennedy and a group of prominent lawyers who were concerned about the nation's persistent problems of political, economic, and social inequity. The bulk of the grants to the Lawyers' Committee has gone to support of its office in Mississippi, where it was considered important for the committee to have a

*See *Community Development Corporations, A Strategy for Depressed Urban and Rural Areas*. Available on request from the Ford Foundation, Office of Reports, 320 East 43 St., New York, N.Y. 10017.

**See *The Public Interest Law Firm, New Voices for New Constituencies*, and *Public Interest Law, Five Years Later*. Available on request from the Ford Foundation, Office of Reports.

presence because of the extent of civil rights litigation in the South at the height of the civil rights movement.

Subsequently, the Foundation broadened its support of civil rights litigation to include seven other organizations, four of which the Foundation helped establish to concentrate on special problems of particular groups—the Native American Rights Fund (NARF); the Mexican American Legal Defense and Educational Fund (MALDEF), the Puerto Rican Legal Defense and Education Fund, and the Women's Law Fund. The other three, which work on various substantive issues are: the National Committee Against Discrimination in Housing; the Legal Action Center, concerned mainly with litigation on behalf of former addicts and ex-offenders, and the Center for National Policy Review, which monitors civil rights and equal-opportunity legislation and policy by federal government agencies.

During the period of Foundation assistance these organizations have brought to court and won some of the most significant civil rights cases in judicial history. The cases include reversal of attempts in the South to delay or circumvent desegregation through so-called "freedom of choice" in education; major progress toward equalizing municipal services in black and white neighborhoods; a series of equal-employment decisions on behalf of Spanish-speaking Americans, blacks, women, and ex-offenders; the restoration of important rights and resources to several Indian tribes; mandated bilingual instruction for Spanish-speaking students; and protection of rights in access to housing and in law enforcement.

Although the Foundation can take credit for strengthening and increasing the effectiveness of all these groups, its support did not spell the difference between life and death for the more established ones like the NAACP Legal Defense Fund. For the newer groups like MALDEF and NARF, Foundation support was crucial.

No one asserts that litigation assures instant solutions to the problems of discrimination. But skillful use of litigation can yield results that have impact far beyond particular court proceedings. With the equal protection clause of the Constitution as their principal guidepost, organizations assisted by the Foundation have achieved such results with a relatively modest level of resources.

Litigation Organizations

It is the purpose of the present inquiry to examine the activities of the nine organizations that have received Foundation support in order to try to gauge the usefulness of litigation as a means of advancing the civil rights principles enshrined in the Constitution and the laws of the United States.

To shed light on this basic question, it is necessary to examine whether the litigated cases are likely to accomplish a pattern of change rather than the correction of individual wrongs. To undertake this review, a team of eight individuals was recruited; in most cases two or more worked together on each organization.[7]

Visits were made to each headquarters to interview key personnel; to study litigation files; and to examine grant applications, official reports, and other published data from office memoranda or newspaper files. Interviews were also sought with key members of each organization's board of directors, and inquiries were made of clients and members of the community at large to test reputation for general effectiveness.

Following are individual reviews of the nine organizations.

NAACP Legal Defense and Educational Fund

In the early years of the twentieth century in the United States, racial segregation was approved by the courts, and black citizens were denied the franchise through various devices to which the courts seemed indifferent. There were few affirmative safeguards against discrimination in employment, housing, municipal services, or in the administration of justice.

The first significant effort to counter these trends came with the Niagara Movement, which was concerned primarily with putting a stop to a frightening increase in lynchings. From this in 1909 came the National Association for the Advancement of Colored People (NAACP), interracial in character and bold for the time in its ambition to move against racial discrimination in the quest for equal opportunity.

Thirty years of gradual progress through litigation and education demonstrated the desirability of a separate organization that could carry on these tax-exempt activities. Thus was created the NAACP Legal Defense and Educational Fund in 1939.

The beginnings were modest, but high quality legal talent, the hallmark of the Legal Defense Fund through its entire history, was there at the inception in the person of Thurgood Marshall, who planned the Fund's initial strategy and began its case work with a single law clerk.

Results must at first have seemed disappointingly meager, but the later victories were built upon the solid foundation of the early years. The Supreme Court's 1954 decision against segregated education in *Brown* v. *Board of Education* might not have been possible without the successful suits that had preceded it, such as *Missouri ex. rel. Gaines* v. *Canada* (1938), *Sipuel* v. *Board of Regents* (1946), *Sweatt* v. *Texas* (1950), and *McLaurin* v. *Oklahoma State Regents* (1950).

The battle against discrimination in education was fought concurrently and with mounting success in other fields, including the right of franchise,[8] housing,[9] interstate travel,[10] and the administration of justice.[11]

For the first fifteen years after *Brown* the Legal Defense Fund moved to ensure that the victory would not be undercut, again using extensive litigation in federal and state courts. The Fund's work was complicated and its litigation timetable delayed by a redeployment of Fund resources to deal with the sit-in demonstrations of the early 1960s. Meanwhile, efforts to combat discrimination in employment, housing, voting, and the administration of justice were stepped up. They were aided by such new federal legislation as the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968.

The resulting expanded level of activity required a larger staff and more money. Through the mid-1960s the Fund's litigation budget was modest (about $500,000 a year), at least when measured against the demonstrated results. The money came principally from individual contributors, with only a relatively small proportion from foundations. The first grant from the Ford Foundation in 1967 was not expressly for litigation, but to establish a National Office for the Rights of the Indigent (NORI) within the Legal Defense Fund. Although subsequent Foundation grants were made for litigation, as dis-

tinguished from scholarship and training, in no year did the Foundation's contribution amount to more than 16 per cent of the Fund's total litigation budget; by 1975, with sharply increased litigation expenses and reduced Foundation support, the percentage fell to 8 per cent. Yet the effect of the Foundation's grants cannot be measured by size alone. It is equally important to take into account how they were used. In the first place, Foundation grants have been essentially "free" money, to be used where the litigation needs were great but not otherwise sufficiently funded, as contrasted with grants that are earmarked for specific kinds of litigation. Secondly, the Foundation's grants signaled confidence in the Legal Defense Fund, and that helped trigger other gifts.

Structure of the Legal Defense Fund. The formal governing body of the Legal Defense Fund is a seventy-member board of directors, about half white and half black, including ten women. The president until January 1975 was William T. Coleman, a Philadelphia lawyer who is now Secretary of Transportation. Mr. Coleman was replaced by Julius L. Chambers, a 1962 graduate of the University of North Carolina Law School, who was the first of seventy-nine legal interns given special training by the Legal Defense Fund. After completing that training in 1964, Mr. Chambers served as one of the Fund's 400 cooperating attorneys. His law firm, Chambers, Stein, Ferguson and Canning, an interracial one, played a large part in court cases leading to the desegregation of the public schools in North Carolina.

The board as a whole mainly ratifies staff proposals, but the sixteen-member executive committee is active in policy formulation, and individual members of the board play a role in determining policy, developing litigation strategy, and fund-raising. The Fund has also been able to recruit the services of distinguished law teachers and other professionals for advice on objectives and strategy.[12]

The scope of the Fund's undertaking is indicated by the litigation budget for 1975, totaling $3,645,000 (an increase of $190,000 over the previous year) and divided as follows:

Employment	$ 600,000
Housing, Land Use, and Municipal Services	250,000
Administration of Justice (including programs on capital punishment and prison reform)	450,000
School Desegregation, North and South	620,000
Other Race and Poverty Litigation	450,000
Legal Information and Community Service	380,000
Public Information	175,000
Fund Raising	720,000
	$3,645,000

According to most observers in civil rights circles, the Fund's legal staff—about 50 per cent black and 20 per cent female—is superb. Yet their very excellence is the source of one of the Fund's principal management problems. Since staff salaries do not compare with those in private firms, there is a constant worry of a brain drain. But, so far, loyalty and dedication have weighed heavily in the balance, and a solid core of experienced litigators has been maintained at all times to direct and supervise the Fund's work.

Fund headquarters is in New York City, where the great majority of its lawyers live. A small branch office is maintained in San Francisco, and an even smaller branch, in Jackson, Mississippi, is being phased out.

The LDF has been directed by Jack Greenberg since 1961, when he succeeded Thurgood Marshall, who in that year was nominated to the United States Court of Appeals for the Second Circuit, and who is now a Supreme Court Justice. Greenberg, and James M. Nabrit, III, the associate counsel, have had as much or more civil rights litigation experience as any lawyer in public practice. In addition to the central staff, the Fund maintains a network of some 400 cooperating attorneys who undertake LDF litigation on a greatly reduced fee basis. LDF cooperating attorneys function in various black communities and consult with LDF central staff to determine case selection and legal strategy. As a case winds its way up through the courts, the involvement of LDF's central office increases, and it is entirely in charge of Supreme Court strategy. Although LDF is the single largest "client" of many of its cooperating attorneys, with

yearly billings occasionally exceeding $50,000 for a single firm, they are encouraged to develop private practices apart from LDF-supported cases. The combination of LDF support and fee-generating private practice has in many areas of the South enabled an indigenous bar, engaged in litigating cases of racial discrimination, to survive.

Although policy guidance is vested in the board of directors, operational decisions on policies and priorities are made by the legal staff in response to the nature and importance of the problems and cases that face both the central office and the cooperating attorney network, and on the basis of available resources.

During the early days of LDF, when it functioned as the legal arm of the NAACP, priorities and policies were formulated by the NAACP Board, an elected body representing the NAACP's nationwide membership. However, in the mid-1960s, largely for tax reasons, it became desirable to create an independent status for most of the litigation activities. The result was a total divorce between LDF and NAACP, which resulted for a time in rivalry and occasional hostility between the two organizations. With time, overt hostility disappeared. Currently, LDF's cooperating attorneys often act as the legal arm of local NAACP chapters, enabling LDF to benefit from NAACP's strong grass-roots organization.

The Litigation Effort. The Legal Defense Fund concentrates its litigation in six fields: school desegregation; employment; housing, land use and municipal services; voting; rights of indigents; and the administration of justice.

The desegregation of public education in the South has largely been the result of concerted LDF litigation pressure, supplemented by the Lawyers' Committee for Civil Rights Under Law and the American Civil Liberties Union. The detailed story of this litigation effort is beyond the scope of this report. Suffice it to say that in the slow and arduous quest for implementation of the 1954 decision in the South, LDF persistently and finally with success concentrated on achieving positive steps to integrate schools and on getting the courts to hold the Southern "freedom-of-choice" response as inadequate to comply with the 1954 decision.

By late 1968, under LDF pressure, the Department of Health, Education and Welfare was actively preparing integration plans throughout the South. As an example of the depth of LDF's litigation involvement at this juncture, it was handling thirty-four cases in the Southern District of Mississippi alone and approximately 100 cases throughout the Fourth Circuit.

By 1969, LDF had completed a sophisticated and successful litigation campaign against freedom-of-choice, with the result that federal policy was directed to positive steps to integrate schools.

One of the most dramatic litigation achievements of LDF has been its success in establishing and implementing a requirement that municipal services—such as sewers, paved streets, garbage collection and street lights—be allocated fairly between black and white neighborhoods. *Hawkins* v. *Town of Shaw, Miss.*[1] was handled by LDF staff lawyer Mel Leventhal, then a member of the staff of the Jackson, Mississippi, office. The impact of the case on residents of Shaw and Itta Bena, a nearby Delta town, has been dramatic in improving the allocation of municipal resources. Moreover, the Shaw experience has been replicated in a number of other small Southern cities by local LDF cooperating attorneys working with the central staff. In several instances the mere threat of litigation has been enough to secure paved streets and other neighborhood improvements. Establishment of the *Shaw* principle has made it possible to bring substantial pressure on large cities like Knoxville and Memphis to provide municipal services on a nondiscriminatory basis.

Summing up, the achievements of the Legal Defense Fund have been far-reaching, its litigation strategy has been sophisticated and brilliantly implemented, and its capacity to affect the lives of its clients has been, and continues to be, enormous.

Three factors in its philosophy and organization have contributed greatly to this record:

1. LDF is not afraid to take a case merely to implement an existing right, as opposed to creating a new one. Indeed, LDF litigation consists in large part of such implementation cases. During the course of such litigation, new issues and new rights tend to

Lawyers' Committee for
Civil Rights Under Law

Hawkins v. Town of Shaw, Miss.: Shaw is a small Mississippi delta town that remained relatively unchanged between 1930 and the end of the 1960s. Its population consisted of 1,500 blacks and 1,000 whites, and its housing patterns kept both groups separate, so that 97 per cent of all housing occupied by blacks was in totally segregated areas.

Andrew Hawkins, a carpenter, built a house for his family in one of these areas. His home, like others in the black residential area, faced a gravel and mud road so rutted that large puddles remained after a rain or "if they were dried up by the sun. At night, there was only a flicker of illumination on the street from a bare bulb hanging on a post hundreds of feet from his house.

When Hawkins looked just five blocks away, at a white residential section, he could see houses facing well-paved streets. Storm sewers carried the rain off quickly, and at night the streets were brightly lit with mercury vapor lamps.

It seemed to him a clear case of racial discrimination, and he complained to the Legal Defense Fund. In its survey, LDF found that the town's tax dollars were indeed being spent largely for the benefit of its white residents. Nearly 98 per cent of all houses fronting on unpaved streets were occupied by blacks. Ninety-seven per cent of all houses without sanitary sewers were in black neighborhoods. Every one of the medium and high intensity mercury vapor street lights bought by the town had been installed in white neighborhoods. There were similar disparities in other municipal services: fire hydrants, water mains, and traffic control signs.

LDF brought a class action suit in the United States District Court and lost. On appeal, the Court of Appeals for the Fifth Circuit reversed the decision of the lower court, holding that discriminatory provision of municipal services based on race is unlawful and requiring the town of Shaw to develop a program to "eliminate the disparities." Moreover, the court reaffirmed that the result and not provable intent was the determinant in such civil rights cases: "'equal protection of the laws' means more than merely the absence of governmental action designed to discriminate; . . . we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and to public interest as the perversity of a willful scheme."

Town officials requested and were granted a rehearing. But on March 27, 1972, the court sustained its previous decision. The legal struggle had taken five years.

In its decision the court noted: "Federal Courts are reluctant to enter the field of local government operations . . . we do not imply or suggest that every disparity of services between citizens of a town or city creates a right of access to the federal courts for redress. We deal only with the town of Shaw, Mississippi, and the facts as developed in this record." LDF promptly followed up its victory by filing lawsuits and negotiating settlements for the equalization of municipal services in other municipalities across the country, relying on statistical sampling to provide the evidence for a finding of racial discrimination.

Andrew Hawkins still lives in Shaw, in the same house, but on a well-paved, well-lighted street. In the four years since the circuit court's decision, the town of Shaw has almost totally "eliminated the disparities." All the work on street lighting, sanitary sewers, water mains, drainage, fire hydrants, and traffic control signals in black residential areas has been completed. The town estimates that all the street paving will be finished within eighteen months.

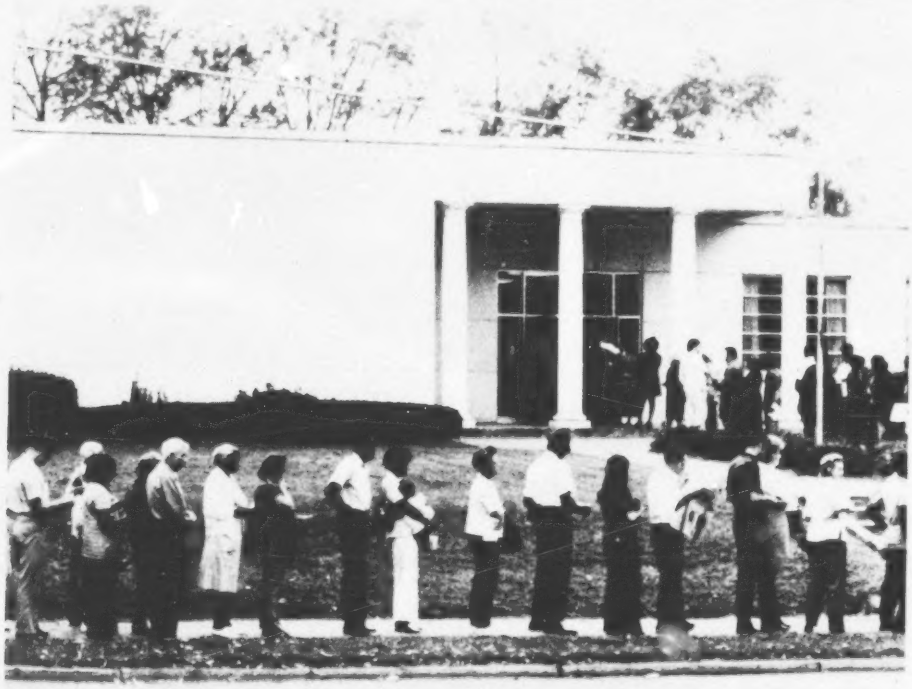
Committee was established with a two-fold purpose: 1) to assist in handling the steep rise in criminal defense and civil rights matters during the summer of 1964, for which it depended in large part on the voluntary services of lawyers from other parts of the country who would come to Mississippi for short periods of time, and 2) to involve the Mississippi Bar in recognizing a professional responsibility to represent unpopular clients.

The office has had some difficulty in coordinating the short-term visits by attorneys from major law firms on its board of directors, and the participation of white private practitioners in Mississippi has been negligible. Furthermore, the former director of the Mississippi office, Herman Wilson, believes that there is no prospect of getting more help from white private lawyers, since there is no longer money to pay their fees. But at least there has been no harrassment from the organized bar, and Wilson believes that the private practitioners respect the office and that the lawyer-to-lawyer relationship with opposing counsel and others is good.

At one time the office was heavily involved in criminal defense, but more recently it has turned to litigation likely to have a broader effect, such as employment discrimination and political rights cases (gerrymandered redistricting cases, election contests where it appears that the black candidate may have had the election stolen from him, etc.). These cases represent about 70 per cent of the office's docket. Another major area of current activity is defense of civil rights organizations and individual defendants in proceedings brought by Mississippi merchants seeking damages arising out of a boycott by blacks of white-owned stores. The importance of these cases lies in the fact that the economic boycott is one of the most potent weapons available to the black community against businessmen who engage in racially discriminatory hiring practices.

In view of the continuing resistance in Mississippi to legitimate demands of the black community, the Lawyers' Committee remains an extremely important resource in civil rights litigation.

But there have been disappointments. As indicated earlier, the expectation of strong involvement by prestigious lawyers, in the wake of an urgent appeal by the President of the United States, has not been realized. Direct cash contributions have not been forthcoming in any significant amounts from large firms. Even the "1 per cent program," whereby large firms donate that percentage



of their billable time, has not gone far to fill the need for legal service. The result is that the Mississippi office operates without sufficient backup benefit from experienced civil rights attorneys.

Because of limited resources, the Mississippi office also has not been able to sustain a program to provide start-up support for black lawyers seeking to open private offices in Mississippi. These attorneys gave the Mississippi office a wide geographical reach in its early stages. Some of them may find it difficult to survive solely on commercial practice. Yet a lawyer is an important resource for a black community, even beyond civil rights matters.

On the whole, the Lawyers' Committee has an impressive record of accomplishment. In 1975 its activities included the following principal projects, each of which had independent funding:

The African Legal Assistance Project was established in the 1960s (largely with support from the Foundation) to assist indigenous South African efforts against discrimination. A principal activity has been to provide legal observers at trials of black students and others who have resisted the apartheid laws.

Domestic programs: The Government Employment Project is concerned with protection against discrimination in governmental hiring, promotion, and discharge policies.

The Model Legislation Project has undertaken a variety of activities aimed at new legislation related to minorities and to improvement of educational materials for minority and bilingual groups.

The School Finance Project, also supported by the Foundation, has been a key participant in the nationwide effort to reform state tax structures and to provide more equitable financing for public schools without regard to the relative wealth or poverty of individual districts in each state.

The Revenue Sharing Project seeks to protect against discrimination in governmental units eligible for revenue sharing funds.

The Election Law Project has scored notable successes in protecting against individual voter discrimination or discrimination by legislative districting or impermissible gerrymandering.

Two further projects were added to the Lawyers' Committee agenda in late 1975:

The Government Services Equalization Center (funded by the Foundation, Trinity Parish, the Veatch Program, and by the Lawyers' Committee itself) has two principal objectives: a) At the outset it plans to use

Connor v. *Coleman*. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 were intended to ensure equal opportunity for all citizens to participate in the political process. In Mississippi, where blacks constitute 37 per cent of the population, passage of the acts brought about a tenfold increase in black voter registration. Despite the fact that blacks were a majority in a number of districts, Mississippi's legislature was totally white.

In 1965, Peggy Connor and several other members of the Mississippi Freedom Democratic party brought suit in federal district court, charging that the existing state apportionment violated the Fourteenth and Fifteenth Amendments as well as federal civil rights statutes. They asked for equally apportioned districts that would not dilute black voting strength. Thus began a twelve-year history of litigation and frustration, punctuated by five appearances before the United States Supreme Court.

Both the legislature and the federal court in Mississippi issued reapportionment plans with multi-member districts, as they had done historically. In these districts, black-majority areas were clustered with one or more white-majority areas to form large districts in which whites held the voting majority and in which candidates could run at-large.

Although the district court struck down the Mississippi legislature's reapportionment plans for the 1967 and 1971 elections, the plans it ordered as substitutes did little to change the situation. Despite a Supreme Court decision directing the lower court to put into effect a single-member district plan for Hinds County, in which concentrations of black voters existed in a number of local districts, the lower court refused, citing "insurmountable difficulties." As a result, only one black was elected among 122 state representatives. The 52-member state senate remained all-white.

When the Mississippi legislature came forward with a new reapportionment plan for the 1975 elections, the three counties in which black voting strength was most substantial remained multi-member districts. In approving the plan, the district court not only ignored Supreme Court directives but also bypassed the U.S. Attorney General, who is charged with the responsibility of approving all plans to redress malapportionment under the Voting Rights Act.

In the course of a third appeal by the Lawyers' Committee for Civil Rights Under Law, the Supreme Court permitted the lower court to devise a temporary plan for the 1975 elections, but stipulated that such a plan was to be based on single-member districts. An additional three black representatives were elected in 1975, all from Hinds County, where the district court finally ordered single-member districts. But the district court delayed action on a permanent plan.

The Lawyers' Committee returned to the Supreme Court for the fourth time. On May 19, 1976, the Court ordered the lower court to proceed without delay and to schedule a hearing on all proposed plans within thirty days. It also ordered that a permanent plan be prepared in time for the 1976 Presidential elections, during which special local elections were to be held to remedy cases of discrimination because of previous malapportionment.

In August 1976, the Mississippi court ordered a statewide single-member plan, which included 30 majority black house districts and 14 in the senate, but delayed special elections. Consequently, a fifth appeal was made to the Supreme Court, seeking relief for additional house districts and for scheduling timely elections. The appeal will be heard February 28, 1977.

the 1971 precedent in *Hawkins* v. *Town of Shaw* (the Legal Defense Fund case discussed previously, holding that municipal services had been provided in a discriminatory manner) to initiate similar suits in other towns in the South and Southwest. b) In the long run there will be an effort to measure the level of municipal services (qualitatively and quantitatively) and thus to assess whether distribution is fair and equal.

The Federal Education Project, supported by the Foundation and Carnegie Corporation in two-year grants, will carry out activities related to Title I of the Elementary and Secondary Education Act and Vocational Act programs, particularly with respect to sex discrimination in vocational studies. It will do so through the collection and dissemination of information, preparation of parent-oriented material, monitoring of Office of Education decision-making, establishment of an effective administrative complaint process, and litigation.

The Lawyers' Committee has grown in size and influence in civil rights litigation matters and has reached a position second only to the Legal Defense Fund. Like the LDF, its sources of support are numerous and varied. In 1973 and 1974, for example, more than thirty-two foundations provided assistance totaling more than $2 million for the two years. The Foundation was the largest contributor, and Rockefeller Brothers Fund the second largest. Yet the Foundation's share was only about one-third of the Committee's total philanthropic support. Clearly, the early Foundation grants have paid off in the form of an effective organization that continues to do creative work and that has demonstrated its capacity to attract substantial support from other sources.

Mexican American Legal Defense and Educational Fund

Discrimination against the nation's estimated 7.5 million Mexican Americans, predominantly in the Southwest, and the absence of a legal organization serving their needs, led the Foundation to grant $2.2 million in 1968 to the newly established Mexican American Legal Defense and Educational Fund (MALDEF).* In 1973 and 1974 further grants were approved for general support and for the development of a Chicana rights project to deal with special issues relating to Mexican American women. By 1973 the Foundation projected that its contribution would provide somewhat less than half of MALDEF's annual budget of

White v. Regester: The right to cast a vote that counts as much as the next person's is firmly anchored in the Constitution. Yet in 1970 the State of Texas, complying nominally with a court order to reapportion her legislative districts, drew up a plan that civil rights groups charged ran roughshod over minority groups. Blacks and Mexican Americans said the plan trammeled their rights to an "equal vote" and to equal opportunity to elect candidates responsive to their needs.

MALDEF, along with the NAACP Legal Defense Fund, labor unions, candidates, and voters (like Diana Regester in the title of the case) challenged the plan in federal court in 1971, charging the state with invidious racial and political discrimination, and won. The lawsuits bore their first fruit in 1972, when, in a stunning break with Texas political history, black and Chicano candidates from two metropolitan counties, Dallas and Bexar, captured five seats in the Texas House of Representatives.

The case was set against this background.

Bexar County includes San Antonio's "barrio," a squalid Chicano slum. It occupies some twenty square miles and contains a third of the county's 800,000 people. They live in cultural isolation from the surrounding community, whose language, unlike theirs, is English. Sixty-five per cent of the people in Bexar County who never went to school live in the San Antonio barrio. So do almost half the county's unemployed. From 1880 to 1972, only four Bexar Chicanos had ever made a run for the legislature.

Dallas County is 25 per cent black, and most of the county's blacks live under slum conditions. At the time of the suit, it had long been Dallas practice for a white-controlled "good government" organization to slate candidates for the Democratic primary. The group simply informed

$850,000, with the balance from government (the Equal Employment Opportunity Commission and the Office of Economic Opportunity), other foundations, corporations, and individual contributions.

The model for MALDEF was the NAACP Legal Defense Fund. The new organization's mandate was to conduct the kind of test litigation program for Chicanos that LDF had developed for blacks: to promote their constitutional and statutory rights; to eliminate a pervasive pattern of educational, economic, and political discrimination; and to funnel grievances into the established dispute-resolving mechanisms of society, especially the courts.

At the time the Foundation helped to establish MALDEF, Mexican Americans were experiencing a heightened sense of ethnic identity and consciousness as well as awareness of discrimination toward the Hispanic community. Their organizations found it difficult to obtain the high-quality, specialized legal assistance available to those against whom they had grievances or claims. Legal rights that had been won by other groups were unenforced in many areas of the western states. Only California Rural Legal Assistance, one of the most successful OEO legal service programs in the nation, dealt with Mexican American legal issues in a systematic way. But it did so only in rural parts of the state and on the basis of poverty law rather than from the broader perspective of discrimination against a minority group. The number of Mexican American lawyers was small, and they lacked the resources to engage in the kind of sophisticated litigation necessary for the successful practice of civil rights and civil liberties law. The Mexican American population, spread through the Southwest, could only turn to the few available OEO legal service organizations, which generally did not have the capacity to pursue law reform. Moreover, few if any lawyers were equipped to deal with the structural problems of the Chicano community—the absence of bilingual and bicultural education, widespread employment discrimination, denial of effective political access, and the depressed status of migrant workers.

By late 1974 MALDEF had a legal staff of fourteen and three para-legal personnel in its offices in San Francisco, San Antonio, and Los Angeles. (At one time it also had specialized offices in Albuquerque and Denver, and had a lawyer in Washington, D.C., specializing in legislative analysis. These field offices have since been closed to reduce costs.)

In its first three years MALDEF's cases

black leaders how many, if any, would be slated. Black candidates rarely won. Since Reconstruction, in fact, only two Dallas blacks had sat in the House. It was the Dallas delegations in the House who led the fight for state segregation laws in the 1950s. And in 1970 the organization ran a campaign to defeat candidates who had overwhelming black support.

In their attack on the reapportionment plan, lawyers introduced evidence to show that generations of legal barriers, interacting with long-time discrimination in other aspects of black and Chicano life—schools, jobs, housing, credit—had eroded the opportunity to participate in politics and discouraged the will to do so. They pointed to such practices as the poll tax, the white primary, annual registration requirements that de facto disenfranchised migrant workers, and laws providing aid at the polls to the blind but not the non-English-speaking.

Among the most formidable barriers to minority representation was "multi-member districting," which the reapportionment plan left intact in Bexar and Dallas counties. Under multi-member districting, candidates for the legislature run from and are elected by the county *at large*, rather than from sub-districts. Minorities, though they dominate parts of the counties, are outnumbered in the county as a whole.

The civil rights lawyers argued that multi-member districting was unconstitutional in the first instance, since Harris County (Houston) was permitted representation according to small sub-districts. Multi-member districting also derogated the First and Fourteenth Amendment rights of blacks and Chicanos, the lawyers maintained, by diminishing their voting strength and political opportunity.

The system saddled at-large candidates with heavier burdens than single-district candidates. Minority candidates are harder put for contributions, and they will think twice before incurring the expense of, say, covering a whole county with campaign television commercials.

Moreover, such districting exacerbated the effect of Texas' "strict majority rule" in primaries. Obtaining a plurality of the vote is not enough to be nominated in Texas. If no one wins a majority, the top two contenders in the first round of a primary face a runoff. If they are black or Chicano candidates, they almost always lose when all opposing forces in the county join against them in the second round.

The three-judge court that had been convened for the case agreed with the arguments by MALDEF and LDF attorneys. It held, "the use of large multi-member legislative districts . . . diluted and cancelled out the voting strength of the Negro and Mexican American minorities in Dallas and Bexar Counties" by reason of the concomitance of racism, poverty, discrimination, and Texas' majority rule system. It ordered Dallas County divided into eighteen sub-districts, and Bexar into twelve, each to elect a member of the House. The state appealed the order, but it was affirmed by the U.S. Supreme Court.

With that victory, the MALDEF coalition sued for and won single-member districting in all of Texas' metropolitan counties. The state attempted an appeal to the Supreme Court but failed on procedural grounds.

The Texas legislature saw the handwriting on the wall, and in 1974 it enacted a bill for single-member districting throughout the state.

In the last five years, largely due to the long court battle, Mexican Americans increased their strength in the 150-member House from eleven to eighteen members, including (opposite) Gonzalo Barrientos, from Austin. Blacks, who held three seats, now hold thirteen.

dealt mostly with educational disparities and employment discrimination. However, it also brought several voting rights, jury discrimination and prisoners' rights cases. Like most such organizations, MALDEF has done its share of firefighting—responding to crises in various communities, such as filing suits on charges of police brutality, for example—which has given these communities a sense of support and confidence. It has also, however, demanded an inordinately large proportion of MALDEF's resources. Such day-to-day activities complicated the task of setting litigation priorities, always a difficult problem for a new organization that is primarily concerned with bringing about fundamental reform and change.

A second set of problems encountered by MALDEF in the early years was that its financial management and accounting and personnel practices were inadequate for the most part. A third difficulty was the tendency of branch offices to act without obtaining clearance from the central office, which reflected local community pressure on the field office staffs.

Despite these problems a 1971 evaluation by the Foundation concluded that in a few short years MALDEF had made itself highly visible, established credibility in the Mexican American community generally, and conducted litigation in a range of target areas. The evaluator's report noted:

> MALDEF's accomplishments are all the more impressive when viewed in the perspective of its assignment, which covers a vast geographical area and a multimillion population. To illustrate by comparisdn: San Francisco Neighborhood Legal Assistance, which covers only one city of 44 square miles, operates with a budget of close to one million dollars. Yet MALDEF, with less than half those funds, handles significant cases all over the western United States. In short, it is the judgment of these evaluators that the Foundation is receiving full value for its money from this grantee.

In the wake of this evaluation MALDEF's Board reviewed the direction and funding of the legal program. At the instigation of the then general counsel, Mario Obledo, whose leadership was uniformly regarded as of the highest quality, Sanford Rosen was hired to become litigation director.* Later Vilma Martinez succeeded Obledo as general counsel. This new leadership team identified three priority areas: 1) *Bicultural education.* Litigation was to be used as a tool to enforce Chicano rights to equal educational opportunity, with emphasis on the ob-

*Mr. Rosen is now in private law practice.

U.S. v. Washington: When the Washington Territory was organized in 1853, Isaac Stevens, its first governor, was commissioned by the federal government to negotiate with the Indians in the area to smooth the way for forthcoming white settlement. By all accounts a tactful and effective negotiator, Stevens was able to persuade the Indian tribes to agree to move voluntarily onto government-designated reservations, thereby sparing future settlers the ordeal of trying to take the land by conquest.

The Indians of Puget Sound and the river valleys north of the Columbia River were known as "fish-eaters." Their diets, social customs, and religious practices were and still are centered on fishing, and they moved seasonally in rhythm with the fish runs. In negotiating the treaties, Stevens promised the tribes that they would remain free to fish at their traditional fishing places, in common with white settlers. Each treaty with the United States government contained a provision similar to this, from the Treaty of Medicine Creek: "The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the Territory."

Following the signing of the treaties, Indians and non-Indians fished together without incident or restriction. But as the region developed and commercial fishing became an important industry, Indians were gradually pushed out and limited to an insignificant portion of the catch. Statutes and regulations discriminated against Indians, whose fishing places were fixed by treaties and whose available means of harvesting fish could not compete with the sophisticated techniques of non-Indian commercial fishermen.

Attempts to enforce the original treaty rights resulted in indecisive court rulings and violent confrontations between Indian and white fishermen. In 1970, barely six months after its formation, the Native American Rights Fund joined with the U.S. government in a suit filed in federal district court on behalf of the Indians. At issue was not only the reaffirmation of a treaty right but also how that right was to be interpreted.

Four years later, in a landmark decision, Judge George Boldt ruled that the Indians were entitled to 50 per cent of the harvestable fish and that off-reservation treaty fishing by Indians was a matter of tribal, not state, jurisdiction. He noted further that "... mere passage of time has not eroded, and cannot erode, the rights guaranteed by solemn treaties that both sides pledged in their honor to uphold." In 1975, an appeal by the state of Washington failed. The appellate court upheld Judge Boldt's decision, finding that the treaties were not grants of rights to but *from* the Indians; that, in effect, they "granted the white settlers the right to fish beside them." An attempt by the state to obtain Supreme Court review was rejected in 1976.

The process of enforcing treaty commitments tests the ability and willingness of the dominant society to share. In Washington, the aftermath of the court's decision has included angry confrontations, incidents of violence, and attempts to impeach Judge Boldt. At the same time, now that their rights are recognized, some of the tribes have been able to get grants and loans for fishing-related businesses, a development that may signal the end of their poverty and dependency.

For NARF, the work on *U.S. v. Washington* is far from done. Implementation of the decision must be arranged and a determination of the state's liability for depletion of the fish runs because of environmental damage must be made. Congressional attempts to abrogate the Indians' rights are afoot, as all courts that have reviewed such rights have affirmed their viability.

tive and fund-raising activities as well as in setting the litigation agenda, and a tax attorney has played an important role in assisting with fiscal matters.

4. MALDEF cooperates well and often with a wide range of public interest and civil rights groups and has joined in a number of suits with such organizations as the NAACP Legal Defense Fund and Public Advocates.

5. MALDEF has made effective use of Reginald Heber Smith Fellows and other attorneys whose salaries are paid by public funds, but MALDEF has not yet developed a network of cooperating attorneys.

Native American Rights Fund

In 1970 the Foundation funded a special national project of the California Indian Legal Services, which a year later was spun off into an independent agency governed by an all-Indian steering committee. Called the Native American Rights Fund (NARF), it operates on the premise that the litigation needs, and indeed the larger interests, of American Indians are fundamentally different from those of other minority groups. They have lost sovereignty over tribal lands and in some cases the lands themselves either through expropriation or pollution. Their rivers have been diverted and their lakes depleted of fish. And their traditional way of life has been threatened. For much of this the United States Bureau of Indian Affairs is held accountable by the Native American community.

The sources of Indian legal rights are treaties and traditional property-rights concepts, not the concept of equal protection. The claims of Indians, however, often run counter to the interests of power companies, developers, and large cities seeking power and water. NARF litigates to maintain the cultural heritage and identity of Indians to resist pressures for their forced assimilation, and in some cases to defend their private property interests, which is scarcely a traditional function of "civil rights" litigation.

By 1975 NARF had sixteen lawyers, fourteen in Boulder and one each in Washington, D.C., and Maine, as well as an impressive support staff engaged in litigation throughout the country. Boulder was chosen for NARF's headquarters because of its centrality and proximity to a law school and because it is easily accessible to but not located in Indian country and thus not identified with any one tribe. NARF's annual budget exceeds $800,000. It is re-

Women's Law Fund

Cleveland Board of Education v. *LaFleur*. When Jo Carol LaFleur told her students at Cleveland's Patrick Henry Junior High School that she was going to have a baby, they applauded. Not so the board of education. It informed her that under its mandatory maternity leave rule she would have to quit her job without pay on March 1, 1971, five months before the expected birth of her child. Failure to comply would be grounds for dismissal. During the two months before her mandatory leave was to take effect, LaFleur's ninth grade English classes were given to a teacher intern, and she was assigned to a seventh grade "transition" class of underachievers. Another Cleveland junior high school teacher forced to take maternity leave at the same time was Ann Elizabeth Nelson. Her French classes were assigned to a teacher who had trained in Spanish.

Under the board's rule, a teacher on maternity leave was not allowed to return to work until the beginning of the next regular school semester following the date that her child became three months old. In effect, this meant that her involuntary leave could last anywhere from six months to more than a year, depending on when the child was born. Nor was such a teacher guaranteed re-employment; she was merely given priority in reassignment to a position for which she was qualified. Before being considered, she had to present a doctor's certificate attesting to her health and, if required, undergo an additional physical examination.

LaFleur and Nelson filed suit in federal district court under the Civil Rights Act of 1871, challenging the constitutionality of the maternity leave rule and asking for reinstatment and back pay. The board of education stated that the regulation was designed to protect the health of mother and child and to provide classroom continuity. It cited the danger of violence in public schools and the possibility that embarrassing remarks might be made to teachers noticeably pregnant, and its medical expert gave lengthy testimony on the physiological changes and complications that might adversely affect a teacher's performance of her classroom duties. The district court found for the board, but was overruled by the appellate court, which concluded that "pregnant women teachers have been singled out for unconstitutionally unequal restrictions upon their employment." The board appealed to the United States Supreme Court, and the Women's Law Fund took up the defense.

On January 21, 1974, the Supreme Court handed down its decision. Writing for the majority, Justice Potter Stewart noted that the objective of continuity of instruction was not served by the mandatory leave rule, that the three months age provision of the return rule was arbitrary, irrational, and served no legitimate state interest, and that both rules violated the Due Process Clause of the Fourteenth Amendment, unduly penalizing female teachers for asserting their right to bear children. In a separate concurring opinion, Justice Lewis Powell observed: "The records before us abound with proof that a principal purpose behind the adoption of the regulations was to keep visibly pregnant teachers out of the sight of school children. . . . In my opinion these regulations are invalid under rational basis standards of equal protection review."

Michael LaFleur was born in July 1971, and was almost two years old when the Supreme Court agreed to hear the case. He now lives in Salt Lake City, where his mother is a law student. The Court awarded LaFleur and Nelson back pay, as well as attorneys' fees, and while the case was being argued the state of Ohio liberalized the law pertaining to maternity leave.

courts. The Foundation, however, has demonstrated a strong commitment to the field. By the end of 1975, its grants for litigation to enforce women's rights included: $150,000 to the NAACP Legal Defense Fund for a project to identify patterns of sex discrimination in private and public employment and to develop an advocacy or litigation program; a two-year grant in 1972 of $140,000, followed by another two-year grant of $200,000 in 1974 to the Women's Law Fund, and a two-year grant of $70,000 made in 1974 to the Women's Rights Project of the Center for Law and Social Policy to establish an administrative law resource center to monitor federal agencies and ensure enforcement through back-up litigation. Of these, the Women's Law Fund, as the largest grantee, will be discussed in some detail here.*

The Women's Law Fund (WLF) was incorporated in 1971 in Cleveland as a nonprofit corporation. It had been organized by the Women's Equity Action League in connection with the then-pending case of *Cleveland Board of Education* v. *LaFleur*, which challenged the Cleveland Board of Education's mandatory maternity leave policy.

The initial two-year grant of $140,000 by the Foundation became the fund's principal support, and its ultimate Supreme Court victory in *LaFleur* remains its most dramatic legal achievement. During the period of the Foundation's first grant WLF filed thirty-eight law suits and three *amicus curiae* briefs.

The Women's Law Fund is one of a handful of groups in the country funded exclusively to handle sex discrimination cases in the areas of employment, government benefits, and education. Its stated objective is to end prejudice and discrimination based on sex, primarily by means of litigation but also by "sensitizing" industry, business, and government to sexually discriminatory policies and practices. From its inception, WLF aimed not only to provide representation to Ohio residents, but also to assist pertinent litigation elsewhere in the country. Its criteria for accepting cases were: 1) the importance of the issue to women, 2)

*It should be added that women's rights is an expanding program at the Foundation that is being developed cooperatively by the National Affairs and Education and Research Divisions. Recently grants were approved to the Mexican American Legal Defense and Educational Fund, the American Civil Liberties Union, the NAACP Legal Defense and Educational Fund, and the Center for Law and Social Policy making available another $700,000 for this kind of litigation.

J. RIVERA
RAFAEL CORDERO
M. ESTRADA
R. SERRANO
E. VEGA
BILINGUAL SCHOOL

Aspira v. Board of Education: Three-fourths of New York City's Hispanic children (largely Puerto Rican) drop out of the public school system before finishing high school. Spanish is their primary language, and many do not know English well enough to master elementary school subjects even though they have the ability to learn. Twelve-year-old Andrea Serrano, for example, made normal progress in her native Puerto Rican school. But two years after she moved to a Brooklyn public school, she still could not understand English and thus could not participate in her classes.

In 1972 Andrea, in a lawsuit against the school system, helped represent the rights of the city's estimated 182,000 other Hispanic students who are deficient in English. Brought by the Puerto Rican Legal Defense and Education Fund on behalf of Aspira, an agency for Puerto Rican educational advancement, and Hispanic schoolchildren, it claimed the Board of Education and various officials were violating the constitutional and statutory right to equal educational opportunity and demanded a comprehensive program of bicultural education. Early defeat in learning, the lawyers said, had paralyzed the city's entire Spanish-speaking community. For example, Puerto Ricans suffer the highest unemployment rate of any group in the city.

The program demanded by the lawyers rests primarily on the proposition that the best medium for the initial stages of learning is the child's dominant language, not only for subject areas, but in reading, too. For the schools to continue "teaching" Spanish-dominant six-year-olds to read first through English wastes valuable, already-acquired language aptitudes, which in fact could enhance their ability to learn to read English. Ultimately, the program had to be focused on four objectives, PRLDEF said. Hispanic children had to be taught reading skills and other subjects initially in Spanish. Schools must simultaneously offer an intensive program to teach them to speak, understand, and read English. Materials in the program must reflect positively the culture of the children. And children's skills in Spanish must be nurtured through a Spanish language-arts program.

While the school officials were trying to whittle these goals down in federal court in New York, the U.S. Supreme Court indirectly boosted the Puerto Ricans' case by deciding unanimously in 1974 (*Lau v. Nichols*) in favor of Chinese students in San Francisco. *Lau* made it mandatory for all children in the same public school district to be given the opportunity to obtain the same education. Where inability to speak English excludes them from participation, the Court said, a school district must take affirmative steps to rectify the language difficulty in order to open its instructional program to these students.

Lau was immediately applied in favor of PRLDEF's position. The Board of Education in 1974 signed a consent decree binding it to employ bilingual staff and to provide specific forms of instruction in Spanish as well as English. But for another year school officials dragged their heels, said the plaintiffs. PRLDEF returned to court alleging subversion of the agreement.

In October 1976 the school defendants were held in contempt by the U.S. District Court for the Southern District of New York. The word "contempt" rings "fiercely," wrote Judge Marvin E. Frankel, and the proceedings prior to the citation triggered a flurry of action in the school system. The court had vindicated the rights of New York's Hispanic population, under the August 1974 consent decree, to the most comprehensive court-ordered bilingual education program in the nation's history.

Puerto Rican Legal Defense and Education Fund

In 1940 about 70,000 Puerto Ricans were living on the United States mainland. Today there are nearly two million, most of whom live in northern urban areas. Although Puerto Ricans are citizens of the United States, and thus not immigrants in any formal sense, they come from a Spanish-speaking Caribbean culture that is essentially foreign to the mainland.

The first annual report of the Ruerto Rican Legal Defense Fund (PRLDF) described the situation of the bulk of Puerto Ricans on the mainland in these words:

> By almost every socioeconomic index [Puerto Ricans] have been found to be the most disadvantaged of this nation's major ethnic groups. The Puerto Rican community represents a valuable resource of bilingual, bicultural manpower and intelligence for the country, one which at present is being wasted.

PRDLF opened its doors for business in July 1972. Its stated purpose is "to make the promise of justice a reality" for the Puerto Rican community living in the United States. Through litigation, legal education, and public education, PRLDF is striving "to make the law a medium for positive social change that will benefit Puerto Ricans as well as other Americans."

PRLDF is headquartered in New York City, but its constituency is the entire Puerto Rican community living in the United States. Its projected operating budget for the fiscal year ending June 30, 1975, was $391,950. Most of these funds come from foundations and a few corporations. The Ford Foundation has granted PRLDF $60,000 in 1973 for one year, $150,000 in 1974 for two years, and $200,000 in 1976 also for two years.

The professional staff of PRLDF consists of an executive director, Oscar Garcia-Rivera, five lawyers (including the director of litigation), an education director, an education counselor-recruiter, and an assistant to the director (with responsibilities for public relations and fund raising).

The chairman and other officers of the board take an active role in PRLDF affairs.

PRLDF has brought cases in education, voting, employment, housing, health, criminal justice, government services, and media representation. Most of the cases are in New York, with a few in Connecticut, New Jersey, and Pennsylvania. Some of the cases attempt to establish new law, others seek to enforce the law in areas of importance to Puerto Ricans.

PRLDF initiates many of its own cases and handles them by itself. In others, it is co-counsel with groups such as the NAACP Legal Defense Fund.

Urban League of Greater New Brunswick v. *Carteret*. Middlesex County, New Jersey, comprises twenty-five municipalities, ranging from industrialized New Brunswick to pastoral Plainsboro. In the last twenty years its population has more than doubled, to some 600,000 inhabitants. As a Standard Metropolitan Statistical Area, it is "an integrated industrial and residential unit with a large population nucleus."

Low- and moderate-income families account for one-third the county's population. Most of them are concentrated in overcrowded, substandard housing in New Brunswick and Perth Amboy, older, industrialized cities that also house more than half the county's minorities.

Although state authorities had voiced concern about the dwindling supply of low- and moderate-income housing in the county, the other municipalities in Middlesex clung to zoning ordinances that favored industrial use and large-lot single-family homes. In 1970, for example, only one-half of 1 per cent of the county's vacant land was zoned for multi-family housing.

In 1974, lawyers from the National Committee Against Discrimination in Housing and the American Civil Liberties Union of New Jersey, on behalf of the Urban League of Greater New Brunswick and low-income home seekers, brought suit claiming that zoning ordinances in the county were unconstitutionally exclusionary and discriminatory. The remedy sought by the plaintiffs in state superior court was an allocation to each municipality of its "fair share" of low- and moderate-income housing for current and projected regional needs.

NCDH and ACLU lawyers thereby sought to apply earlier New Jersey court decisions to an entire region, rather than a single municipality. *South Burlington County NAACP* v. *Township of Mt. Laurel*, for example, held that growing municipalities have an affirmative obligation to provide their fair share of the regional need for low- and moderate-income housing.

On May 4, 1976, the state court struck down the zoning ordinances of eleven of the municipalities cited. (The others had been granted dismissals conditional upon their promise to purge their zoning laws of exclusionary features.) In his decision, Judge David D. Furman quoted from the *Mt. Laurel* opinion: "Certainly when a municipality zones for industry and commerce for local tax purposes, it without question must zone to permit adequate housing within the means of the employees involved in such uses." The eleven municipalities were ordered not only to rezone but also to take affirmative actions to provide their fair share of 18,697 housing units estimated to be needed by 1985.

For the first time housing had been allocated on a regional basis, thereby promising low- and moderate-income families a wider choice of where they may live in the future.

The Middlesex case built on state constitutional precedents that established economic segregation rather than intent to discriminate racially as the basis of ordering low- and moderate-income housing in suburban areas. In January, 1977, however, the U.S. Supreme Court ruled (in *Village of Arlington Heights* v. *Metro Housing Development Corporation*) that under the U.S. Constitution suburban communities could bar low- and moderate-income housing if there was no intent to discriminate along racial lines. Because the Supreme Court left open the question of whether proof of a racially discriminatory impact, regardless of intent, was sufficient to establish a violation of the federal Fair Housing Law, it is still too early to judge what effect the decision will have on open housing litigation. The Middlesex counties have appealed their case.

nity of Puerto Rican lawyers in the United States may be regarded as one of the most important contributions of PRLDF.

When the fund's founders first began to solicit funds, they faced persistent questioning about the need for an organization like PRLDF. The answers are rooted in the needs of the Puerto Rican community, especially in the language area, which are different from the needs of other minority groups. Other defense funds have more than they can do in serving the needs of their specific constituencies, and the interests of the Puerto Rican community occasionally conflict with those of other minority groups. This is especially true of cases brought under Title VII of the 1964 Civil Rights Act, which prohibits discrimination in employment. And the fund is competing for limited public funds to support programs in the areas of education, family services, and health programs. Further, the Puerto Rican community is relatively unorganized and politically weak. Nevertheless, PRLDF has quickly established itself as an important organization in the community. Many groups look to it for advice, and it is the only organization with legal resources concentrating on serving Puerto Ricans as a group.

PRLDF has a dedicated and competent staff. Its litigation program consists of many substantial cases and has within a short time achieved some notable successes. Although its efforts to litigate in nine areas may be too ambitious for a small staff of lawyers, PRLDF feels obligated to meet requests for assistance. It also believes that the legal and litigation needs of the Puerto Rican community are so wide-ranging and urgent, with no other organizations designed to deal with them, that it will take some more time to develop a tight agenda.

Finally, there is a funding problem. PRLDF currently depends on relatively small grants from a number of foundations and corporations, and there is little prospect at this time of significant support from other sources.

National Committee Against Discrimination in Housing

The civil rights litigation organizations surveyed thus far have all been concerned with various forms of discrimination based on race, ethnic origin, or sex. The remaining organizations, beginning with the National Committee Against Discrimination in Housing (NCDH), focus on substantive areas where such discrimination occurs:

Beazer v. New York City Transit Authority: Carl Beazer started working for the New York City Transit Authority in 1960. He was promoted the following year, and again in 1966. In May 1971, Beazer, who had been a heroin user for almost twenty years, entered a methadone maintenance program. Six months later, having learned that he was on methadone, the TA fired him. A review board found that he had handled his job competently; nevertheless, it upheld his dismissal, citing the regulation that prohibits the authority from employing any person known to be using narcotics.

Following his dismissal, Beazer found employment as a counselor in a methadone maintenance program and subsequently with Wildcat Service Corporation, an employer of ex-addicts and ex-offenders. His job record was good, and by the end of 1973 he had ceased using methadone as well as heroin.

In the meantime, the Legal Action Center had been formed by the Vera Institute of Justice to effect reform in the criminal justice system, with particular emphasis on challenges to legal barriers to fair treatment and jobs for ex-addicts and ex-offenders.

To center staff, the Transit Authority seemed a good place to begin. As a major public agency (more than 40,000 employees), it represented an important source of employment for former addicts, because it offered a wide variety of entry-level jobs as well as security and upward mobility.

Joining Beazer as plaintiffs in the class-action suit were three other methadone maintenance patients. One had been similarly fired by the TA; two had been denied employment by the TA because of previous methadone use. All four of the workers had displayed records of stable employment.

The case was heard before the United States District Court for the Southern District of New York. The Transit Authority argued that the dangerous nature of conducting the city's subway and bus system justified its blanket exclusion of methadone-maintained former addicts. But in his opinion handed down on August 6, 1975, Judge Thomas P. Griesa ruled that the exclusionary policy was "not rationally related to the safety needs, or any other needs, of the TA," and that substantial numbers of persons on methadone maintenance had proved fully capable of performing a wide variety of jobs, including some that might be considered dangerous. Further, the court stated that "the crucial point made so strongly by plaintiffs' witnesses was never convincingly challenged—that methadone as administered in the maintenance programs can successfully erase the physical effects of heroin addiction and permit a former heroin addict to function normally both mentally and physically."

Citing the decision as a major breakthrough for former drug users, the center's lawyer noted that discrimination against such persons was known to be pervasive, "particularly vicious, and from society's point of view, counterproductive, since former drug abusers denied employment are left little alternative to a life of renewed drug abuse and crime."

Judge Griesa has taken under advisement a request for reinstatement of the plaintiffs, with full back pay, seniority benefits, and pension rights. Carl Beazer and another plaintiff in the case have gone on to well-paying white collar jobs. At this writing the other ex-addicts are now on the job at the Transit Authority.

does not appear to take much initiative in shaping policy.

The litigation staff consists of five full-time lawyers and a part-time consultant. It is headed by Martin E. Sloane, general counsel, a nationally known expert on problems of housing discrimination and a former staff member of the United States Civil Rights Commission. NCDH is located in Washington, D.C., and there are no branch offices, nor does the committee have a system of volunteer or cooperating attorneys.

The staff depends for new cases on personal knowledge, referrals from local fair housing groups, or from attorneys who are familiar with NCDH goals and work. Among the committee's principal cases have been challenges to 1) a regulation of a Cleveland suburb alleged to preclude construction of low-income housing; 2) practices of developers in advertising and rental transactions alleged to violate the 1968 Housing Act; 3) Presidential impoundment of housing funds; 4) a city's refusal to build public housing in white neighborhoods; 5) zoning laws that tend to keep the poor locked in the inner city, and 6) discrimination in mortgage practices. Other potentially fruitful sources of NCDH cases are local fair housing groups (which have begun to funnel information into NCDH), local NAACP chapters, and the Mexican American Legal Defense and Educational Fund in the West and Southwest. Finally, should a network of cooperating attorneys be established in the future, they could assist the central staff in maintaining a higher volume of litigation than is presently possible.

Legal Action Center of the City of New York

The Legal Action Center, which commenced operations in July 1973, is a public interest law firm concentrating on the diversion of drug abusers from the traditional criminal justice process and on helping ensure jobs and fair treatment for ex-offenders returning from prison. Sponsored by the Vera Institute of Justice, and launched with Vera's assistance, the Legal Action Center is now an independent entity with its own board of directors.

To meet its twin objectives, the center proposed to offer free legal advice and assistance to persons suffering discrimination as a result of licensing laws and regulations, private and public employment policies, union membership practices, and bonding company policies that tend to bar ex-offenders and ex-addicts from employment.

Brown v. Mathews: Ten years after *Brown v. Board of Education* declared public school segregation unconstitutional, 98 per cent of black children in the South were still attending all-black schools. By 1972 the situation had changed dramatically: the figure was down to 9 per cent.

One of the most important factors in this turnabout was the vigor with which the civil rights staff of the Department of Health, Education and Welfare pursued its enforcement duties under Title VI of the Civil Rights Act of 1964. Under that legislation it became HEW's responsibility to prevent racial and other forms of discrimination in public schools and to withhold federal assistance from school districts that failed to comply with the law.

Most southern school districts, when confronted with that choice, decided to comply. But in the northern and western states almost no progress was made. In 1972, more than 70 per cent of black children attended majority black public schools, and the greatest number were in schools 80 per cent or more black.

There was convincing proof that Title VI was an effective means of achieving integration. Early in 1971, therefore, the Center for National Policy Review began to question the reasons for the persistence of segregation in the North.

The center obtained a court order giving it access to files on eighty-four northern school districts HEW had reviewed. From its study of those records, the center found that in many cases, although HEW's investigations had uncovered violations, the agency had not taken effective action. In other cases, where large numbers of minority children were in racially isolated schools, it had failed to make any investigation at all.

Armed with this evidence, the center, the NAACP, and the Legal Defense Fund brought suit in the District Court for the District of Columbia on behalf of eighteen public school students. Plaintiffs claimed that public schools in thirty-three northern and western states continued to receive federal financial aid while they were in violation of Title VI, and contended that HEW had failed to initiate investigations, delayed those it had begun, and refused to cut off funds in cases where violations had been proved and there was no evidence of voluntary compliance with the law.

Specifically, the suit charged that in fourteen school districts investigations had been pending for periods ranging from one and one-half to eight years. Another twenty-six districts, found to be in violation of Title VI, had not achieved voluntary compliance and were still receiving federal funds. An additional six that had been declared ineligible for assistance under the Emergency School Aid Act of 1972 (ESAA) because of substantial civil rights violations continued to receive funds from HEW under other aid statutes.

On July 20, 1976, Judge John J. Sirica found for the plaintiffs, noting that "HEW has failed to fulfill its duties and responsibilities under the statute. To hold otherwise would be to permit the defendants to avoid their statutory duty by simply failing to conclude the investigatory process." The court ordered HEW to conclude pending investigations of the fourteen school districts cited in the complaint within sixty days and commence enforcement proceedings within no more than another sixty days. A maximum sixty-day period was also ordered for beginning enforcement proceedings against the others.

As a result of Judge Sirica's order, several districts entered into agreements to desegregate their schools in September 1976. HEW initiated enforcement proceedings against those districts already found to be in noncompliance with Title VI and ESAA.

treatment. Similarly, a center attorney helped Vera work out an agreement with the Social Security Administration designed to make participants of one of Vera's projects eligible for federal disability benefits.

The center has provided technical assistance to agencies concerned with reform of the provisions governing the award of "Certificates from Disability" in New York State. As a result persons with federal or out-of-state convictions are no longer barred from eligibility for such certificates, which are essential to remove the various automatic employment disqualifications imposed by New York upon the ex-offender, as well as to ease many discretionary disqualifications. The center has also worked with administrative agencies with rule-making power over federal civil service employment to draft regulations that will help ensure against employment discrimination in the future.

The center's small staff has been able to maximize its effectiveness through cooperative relations with law school clinical programs. Thus the center has worked closely with the Clinical Legal Assistance Resource (CLAR) and the Employment Rights Project at the Columbia University Law School. Professor Michael Meltsner, co-director of CLAR, acts as a regular consultant to the center, and is co-counsel on several cases. Many students from both clinical projects have been assigned to work on center cases. In addition, a New York University Law School student was assigned to the center in the spring of 1974 as part of the Arthur Garfield Hays Civil Liberties Fellowship Program.

The center has also worked with a number of New York law firms on a co-counsel basis, and worked out an arrangement with one firm under which an associate of the firm was assigned, on a part-time basis, to help handle a major case under the center's supervision.

The Legal Action Center's performance record resolves most of the doubts one might have about the ambitiousness of its agenda. It has performed efficiently and well on behalf of its ex-addict and ex-offender clients.

Center for National Policy Review

In the main, the Center for National Policy Review (CNPR) seeks to achieve its ends not by litigation, but by participation in the rule-making and adjudication process within the executive branch of the federal government. CNPR views itself as an advocate, within that branch, for the same broad prin-

ciples of equality that the legal defense funds and substantively oriented organizations pursue in the courts.

CNPR, which functions out of Catholic University School of Law in Washington, D.C., brings together several more or less independently operated and funded projects under one umbrella. No attempt is made here to review the whole because the Foundation's grants were awarded exclusively for work on the rule-making and internal adjudicatory process of federal executive agencies.

CNPR usually does not litigate on its own,* but gathers and analyzes data for legal action and on occasion files an *amicus* brief. It has played a constructive role in suits challenging school segregation on a metropolitan level by serving as an unofficial clearing house for information and by providing valuable back-up assistance on cases challenging private school segregation in Buffalo, Wilmington (Del.), and Louisville.

CNPR's approaches to various agencies depend upon their internal means of reaching decisions. Whenever an agency utilizes an adjudicatory procedure, CNPR appears in the traditional posture of an *amicus* or litigant. However, most agencies depend on rule making, rather than adjudication. Accordingly, CNPR's primary activity consists of presenting issues to agency specialists who formulate the rules and in urging that the issues be resolved in a non-discriminatory manner. Examples of CNPR's work are:

Banking Regulatory Agencies. CNPR has expressed concern about a series of provisions under consideration by HUD that would adversely affect people with low incomes. For example, when HUD considered authorizing the issuance of variable-rate mortgages, which would allow interest rates to float with the money market, CNPR sought to "educate" HUD officials on the impact of that kind of mortgage on fixed-income persons and on those whose income is subject to a ceiling. The fear was that bankers would tend to evaluate variable-rate mortgages in terms of potential future earning power, making it that much more difficult for low-income people to secure mortgage loans.

An example of successful CNPR intervention in the rule-making process occurred in the Federal National Mortgage Association (Fanny Mae) regulation governing its secondary private mortgage market. Initial Fanny Mae regulations disqualified income of spouses, insisted upon vague "character" references, and discriminated against older persons. After vigorous CNPR objection, the regulations were rewritten.

Finally, CNPR was instrumental in persuading the Federal Home Loan Bank Board to issue regulations prohibiting discrimination in mortgage lending. The follow-up effort is to persuade the FHLB examiners to incorporate a non-discrimination check into their routine annual investigation of member banks.

Law Enforcement Assistance Administration. CNPR formally petitioned LEAA to amend its non-discrimination regulations to include provisions barring sex discrimination and arbitrary height-weight standards and requiring affirmative action plans. CNPR negotiated a new set of regulations, which were promulgated.

Uniform Testing Guidelines. CNPR has participated actively with the federal Equal Employment Opportunity Commission in efforts to have the Civil Service Commission establish uniform non-discriminatory testing standards for government employment.

Department of Health, Education and Welfare. A suit against HEW has been filed under the joint auspices of CNPR, the NAACP Legal Defense Fund, and the NAACP itself to act on school segregation in the North.

Given the enormous power of the federal bureaucracy, the work of a non-governmental organization concerned exclusively with exerting pressure against discriminatory practices within the executive branch is most useful. No other force primarily dedicated to this specific objective exists. Given the limitations on size and staff, CNPR performs its function well, and its impact, though harder to trace than the results of litigation, has been considerable.

*Examples of CNPR's active role in litigation include serving as counsel in a Supreme Court case that resulted in a school desegregation plan for Wilmington, Delaware, and as co-counsel (with the Lawyers' Committee) in a case involving enforcement of civil rights provisions of the general revenue-sharing law. In the latter case, federal courts ordered the U.S. Treasury Department to withhold more than $100 million from Chicago pending elimination of job discrimination in the city's police department.

Summary

The objectives of plaintiffs in civil rights litigation often challenge prevailing patterns accepted by the general public. Typically, relief is sought by one or more members of a disadvantaged group who can succeed only by upsetting an established practice. The uphill nature of the task is both the problem and the reward of the civil rights movement.

It is in the best tradition of American democracy to protect minority interests, whether political, religious, racial, ethnic, or sexual. When the majority is thus confronted, conflict is likely. Against this background, the champions of minority interest find it difficult to obtain financial support.

To the extent that money has been given, it was until recent years not for litigation, but mostly for projects using education or other non-litigative approaches. One reason there has been relatively little interest in providing support for litigation may be that it was considered too risky or controversial in the eyes of many funding sources. If this is so, it may be an unconscious or oblique recognition of the fact that litigation dollars have the potential for greater systemic change than money spent in more conventional ways.

When the Foundation made its major commitment to civil rights litigation in the late 1960s, it was a major effort by a private organization to look at civil rights as a whole. The decision was made not to limit support to a single group or area of minority rights; civil rights was identified as a unifying concept beyond particular categories of race, national origin, or sex. By linking these traditional criteria with substantive problems of housing, treatment of narcotics addicts and ex-offenders, and discrimination by government regulation or practice, it became possible to view civil rights as a matter of concern to all and an area where common solutions might be found to transcend the former lines of conceptual distinction.

The results have been significant. Each of the nine organizations that has received Foundation assistance has made a distinctive contribution to the total civil rights effort, and the activity of each has reinforced that of other organizations, even when their respective agendas were not directly related to each other. In short, the reach of each organization has been extended with the creation of each new organization. The weaving together of formerly separate strands has greatly strengthened the pursuit of civil rights goals in the United States.

When the Foundation led the way in making awards to civil rights litigation grantees, other philanthropic institutions found it easier to move along the same path. Thus, the Rockefeller Brothers Fund has developed a similarly broad program, and several other foundations have felt encouraged to make individual grants to particular organizations.

Private support for civil rights litigation is still not massive, but it is of sufficient size to have made a discernible impact. It is important that the level of resources now reached be sustained and that the work retain the broad scope and the conceptual focus that it has developed.

Notes

1. Higginbotham, Racism and the Early American Legal Process, 1619-1896, in Symposium on Blacks and the Law, 407 The Annals 1, 3 (May 1973).

2. Gains in other areas had to wait for a change in the national temper. Fifty-eight years before *Brown*, Plessy v. Ferguson, 163 U.S. 537 (1896), validated the concept of separate-but-equal. For a history of *Plessy* that puts the case in its unhappy historical context, see Greenberg, Litigation for Social Change: Methods, Limits and Role in Democracy, 9, 23 (1974). "The one thing Tourgée [plaintiff's attorney] could not control, nor can any litigation campaigner, was the historical period. Tourgée would have won with *Plessy* in 1954. The lawyers who brought *Brown* would have lost in 1896." *Id.* at 334.

3. See Derfner, Racial Discrimination and the Right to Vote, 26 Vand. L. Rev. 523 (1973); McKay, Race Discrimination in the Electoral Process, in Symposium on Blacks and the Law, 407 The Annals 102 (1973).

4. 347 U.S. 483, 495 (1954).

5. There were of course other groups, but none so active in the battle to eradicate discrimination. Until 1940, when the NAACP Legal Defense and Educational Fund was formed, the parent organization, the NAACP, had carried the principal burden of litigation; after 1940 the Legal Defense Fund, free of all lobbying functions, was able to concentrate its efforts on a vigilant litigation stance.

6. See, e.g., NAACP v. Button, 371 U.S. 415 (1963); Brotherhood of Railroad Trainmen v. Virginia, 377 U.S. 1 (1964); United Mine Workers v. Illinois Bar Ass'n, 389 U.S. 217 (1967); United Transportation Union v. State Bar of Michigan, 401 U.S. 576 (1971).

7. Without the careful fact-finding and perceptive analysis of the following members of the overall team, this report could not have been written: Professor Leroy Clark (New York University), Stephen Gillers, Esq., Professor Michael Meltsner (Columbia University), Professor Burt Neuborne (New York University), Professor Sheila Rush Okpaku (Hofstra University), Professor Kellis Parker (Columbia University), David Rudenstine, Esq., and Robert Sackett, Esq. As is the custom in these matters, and truly the fact in this case, the overall author thanks those who provided the underlying data and offered opinions, while holding blameless each and all for errors of fact or interpretation that may have crept into the final product.

8. E.g., Lane v. Wilson, 307 U.S. 268 (1939); Smith v. Allwright, 321 U.S. 649 (1944); Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947), cert. denied, 333 U.S. 875 (1948).

9. E.g., Shelly v. Kraemer, 344 U.S. 1 (1948); Barrows v. Jackson, 346 U.S. 249 (1953).

10. E.g., Morgan v. Virginia, 328 U.S. 373 (1944).

11. E.g., Chambers v. Florida, 309 U.S. 227 (1940); Hill v. Texas, 316 U.S. 400 (1942); Furman v. Georgia, 408 U.S. 238 (1972).

12. The law teachers, in addition to Dean Louis H. Pollak (University of Pennsylvania), the Vice-President of the Board, include Professors Anthony Amsterdam (Stanford), Charles Black (Yale), Leroy Clark (New York University), Alan Dershowitz (Harvard), Michael Meltsner (Columbia), Charles Quick (Illinois), Michael Sovern (Columbia), and James Vorenberg (Harvard). Distinguished scientists who have aided the Fund include Professor Kenneth B. Clark (City College, City University of New York), Professor James S. Coleman (University of Chicago), Dr. Robert C. Weaver (former President of Bernard Baruch College, City University of New York), and Professor Marvin Wolfgang (University of Pennsylvania).

13. 437 F.2d 1286 (1971), aff'd en banc, 461 F.2d 1171 (5th Cir. 1972).

14. Of this total, $250,000 was designated for the award of scholarships for the legal education of selected Mexican Americans.

15. 414 U.S. 563 (1974).

Appendix

Civil Rights Litigation Programs Supported by the Ford Foundation

	Grants as of March 31, 1977
Catholic University of America, Center for National Policy Review Washington, D.C. 20064 William L. Taylor, Director Founded: 1970	$1,230,000
Lawyers' Committee for Civil Rights Under Law 733 Fifteenth Street, N.W., Suite 520 Washington, D.C. 20005 Paul Dimond, Director Albert E. Jenner, Jr., Co-Chairperson, Executive Committee Stephen J. Pollak, Co-Chairperson, Executive Committee Founded: 1963	2,030,000
Legal Action Center of the City of New York, Inc. 271 Madison Avenue, Suite 708 New York, New York 10016 Elizabeth Bartholet DuBois, Director Arthur L. Liman, Chairperson, Board of Directors Founded: 1973	675,000
Mexican American Legal Defense and Educational Fund 145 Ninth Street San Francisco, California 94103 Vilma S. Martinez, President and General Counsel Gregory Luna, Chairperson, Board of Directors Founded: 1968	4,290,000
NAACP Legal Defense and Educational Fund, Inc.* 10 Columbus Circle New York, New York 10019 Jack Greenberg, Director-Counsel Julius L. Chambers, Chairperson, Board of Directors Founded: 1939	2,393,750
National Committee Against Discrimination in Housing 1425 H. Street, N.W. Washington, D.C. 20005 Edward L. Holmgren, Executive Director Charles Duncan, Chairperson, Litigation Review Committee Founded: 1966	1,189,000
Native American Rights Fund 1506 Broadway Boulder, Colorado 80302 Thomas Fredericks, Director David R. Risling, Chairperson, Steering Committee Founded: 1971	2,887,000
Puerto Rican Legal Defense and Education Fund 815 Second Avenue New York, New York 10017 Oscar Garcia-Rivera, Executive Director Jack John Olivero, Chairperson, Board of Directors Founded: 1972	410,000
Women's Law Fund, Inc. 620 Keith Building, 1621 Euclid Avenue Cleveland, Ohio 44115 Jane M. Picker, Project Director Lizabeth Moody, President, Board of Trustees Founded: 1971	540,000

*Since 1967, the NAACP Special Contribution Fund, Inc. has received approximately $4,350,000 from the Ford Foundation for both general and project support of the membership organization's activities. A significant portion of the Foundation's contribution has been applied by the NAACP leadership to defray the litigation and related expenses of its Legal Department.

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